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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: MKB - 176919

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 20, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by [REDACTED] Wisconsin, on behalf of the Bureau of Long-Term Support, regarding Medical Assistance (MA), a hearing was held on December 8, 2016, by telephone.

This hearing was originally scheduled for October 31, 2016. At that time, it was determined that [REDACTED] Wisconsin had not provided enough information to ascertain what it did, since it submitted no exhibits what-so-ever. With Petitioner's consent, the hearing was rescheduled to December 8, 2016, to see if [REDACTED] Wisconsin would provide the necessary documentation.

On November 17, 2016, ALJ Ishii contacted [REDACTED] Wisconsin to inquire about exhibits and a summary statement. [REDACTED] Wisconsin indicated that it was not responsible for defending its decisions. [REDACTED] Wisconsin referred the matter to a Katie Beckett Program Nurse.

The hearing took place as scheduled on December 8, 2016.

The issue for determination is whether [REDACTED] Wisconsin correctly determined the Petitioner's eligibility dates for the COP, Katie Beckett, and CLTS programs.

NOTE: Post-hearing, ALJ Ishii contacted Petitioner's mother and DHS concerning how DHS determined the start date for the COP and CLTS Programs, since the only information provided by DHS related to the Katie Beckett start date determination. The e-mail response from DHS has been marked as Exhibit 7 and entered into the record. Petitioner's mother indicated via telephone that the start date was likely the first date the [REDACTED] Consultant came to her home.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: DHS by Letter  
Bureau of Long-Term Support  
PO Box 7851  
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:  
Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. Petitioner was born on [REDACTED] with acute myelogenous leukemia / congenital leukemia cutis. The condition required swift implementation of chemotherapy. (Exhibits 3 and 5)
3. Petitioner was born in a hospital in [REDACTED], but transferred from his birth hospital to [REDACTED] Hospital of Wisconsin. (Exhibit 3)
4. Petitioner was discharged from [REDACTED] Hospital on May 12, 2016. (Testimony of Petitioner's mother; Exhibit 3)
5. On June 21, 2016, an intake worker from [REDACTED] Wisconsin met with Petitioner's parents. (Testimony of Petitioner's mother; Exhibit 7)
6. On June 26, 2016, Petitioner's parents submitted, on Petitioner's behalf, a general application of Children's Long Term Support Programs. (Exhibit 5)
7. On August 17, 2016, the Disability Determination Bureau found that the Petitioner was a disabled child, with a disability onset date of [REDACTED]. (Exhibit 4)
8. On August 24, 2016, [REDACTED] Wisconsin, a privately contracted agency, for the Department of Health Services, Division of Long Term Care, sent the Petitioner a notice, advising him that he was determined eligible for the Children's Long Term Support Program, effective June 21, 2016, the Community Options Program, effective June 21, 2016 and for the Katie Beckett program, effective May 12, 2016. (Exhibits 1 and 6)
9. Petitioner's mother, on Petitioner's behalf, filed a request for fair hearing that was received on September 20, 2016, to contest the effective date of Petitioner's eligibility for the above programs. (Exhibit 1)

### **DISCUSSION**

The Petitioner's parents filed an appeal, because they would like medical coverage backdated to [REDACTED], the Petitioner's date of birth.

#### ***I. Community Options Program***

The Community Options Program<sup>1</sup> (COP) is a Medicaid subprogram that provides services to people who need the same levels of physical or mental health care as nursing home residents do, in order to keep

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<sup>1</sup> The program Guidelines for the Community Options Program a.k.a. COP can be found on-line at:

those individuals in their own homes. “Its purpose is to provide cost-effective alternatives to expensive care in institutions and nursing homes.” *DHS Website, Basic COP Information*; <https://www.dhs.wisconsin.gov/cop/background.htm> All other sources of funding or voluntary help will be considered, before Community Options Funds are used. Id.

Some examples of what COP can cover are home modification, respite care, adaptive equipment, financial counseling, care management, communication aids, home health care, residential services, personal care, and housekeeping. *DHS Website, Basic COP Information*; <https://www.dhs.wisconsin.gov/cop/background.htm>

Medicaid eligibility generally begins the first day of the month in which the valid application is submitted and all program requirements are met, unless:

1. The person becomes Medicaid eligible by meeting a deductible,
2. The person is an inmate of a public institution,
3. The person is being added to the Medicaid eligible household
4. The person recently moved to Wisconsin
5. The person applies for Home and Community-Based Waivers
6. Family Care and PACE or Partnership participants
7. The person is applying for QMB (Medicare Premium Assistance)
8. The person is applying for Senior Care

Medicaid Eligibility Handbook<sup>2</sup> (MEH) §2.8.1

For home and community waivers, eligibility begins on the program start date provided by the care manager. Id; MEH §28.7 The COP is one of the Home and Community-Based Waivers programs. MEH §28.1

Based upon the testimony of Petitioner’s mother and information provided by DHS in Exhibit 7, the ██████ Consultant picked June 21, 2016 as the start date for Petitioner’s COP benefit, because that was the date the consultant went to Petitioner’s home and began the intake process.

According to the Medicaid Waivers Manual <sup>3</sup>, in Section 6.03, the earliest possible start date for participation in a waiver program is when all four of the following criteria are met:

1. The person has met all Medicaid financial and non-financial eligibility requirements
2. An initial service plan has been established
3. The level of care eligibility has been established (the date of the Long Term Care Functional Screen)
4. The person resided in a waiver allowable setting (i.e. a private residence, rooming/boarded house, an Adult Family Home, Residential Care Apartment Complex, or Community Based Residential Facility – per section 2.08, subsection B)

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<https://www.dhs.wisconsin.gov/cop/guidelines.htm>

<sup>2</sup> The Medicaid Eligibility Handbook can be viewed on-line at: <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>

<sup>3</sup> The Medicaid Waivers Manual can be viewed on line at:  
<https://www.dhs.wisconsin.gov/waivermanual/index.htm>

The information regarding the selection of the begin date for Petitioner's COP benefits is sketchy, but given that it is undisputed that Petitioner's intake was on June 21, 2016, there is no possible way the Petitioner could have met the four criteria state above, prior to June 21, 2016. Thus, it is found that the agency correctly started the Petitioner's COP benefits on June 21, 2016.

## ***II. Katie Beckett Program***

The Katie Beckett Program is a Special Status Medicaid subprogram. The Katie Beckett Program allows children with long-term disabilities, mental illness, or complex medical needs, to obtain a Wisconsin ForwardHealth Medicaid card. <https://www.dhs.wisconsin.gov/health-care-coverage/health-care-coverage.htm> In other words, the Katie Beckett program is a full benefit Medicaid program. MEH §21.2

The Katie Beckett program does not deem (count) assets and income from the natural or adoptive parents, when determining a child's eligibility for the program. MEH §25.6 However, in order to be eligible for Wisconsin Medicaid through the Katie Beckett Program, a child must meet ALL of the following criteria:

1. Be under 19 years of age;
2. Be disabled by standards in the Social Security Act;
3. Be a United States citizen or have acceptable immigration status;
4. Be a Wisconsin resident;
5. Live at home with their family;
6. Require a level of care at home that is typically provided in a hospital or nursing facility;
7. Be provided safe and appropriate care in the family home;
8. Not have income in their name in excess of the current standards for a child living in an institution (Effective 10/01/2009, children under the age of 19 are not subject to an asset test);
9. Not incur a cost at home to the Wisconsin Medicaid program that exceeds the cost Medicaid would pay if the child were in an institution.

*Emphasis Added.* <https://www.dhs.wisconsin.gov/kbp/eligibility.htm>

The Disability Determination Bureau determined that the onset of Petitioner's disability was the date of his birth, [REDACTED] (Exhibit 4) After the on-set of his disability, the Petitioner did not begin living at home until May 12, 2016, the date the Petitioner was first discharged from the hospital after his birth. Consequently, DHS states, correctly, that the Petitioner's Katie Beckett benefits could not begin until May 12, 2016.

## ***III. Children's Long Term Support Waivers***

The [REDACTED] Long-Term Support Home and Community-Based Medicaid Waivers (CLTS Waivers) is a sub-program of the Medicaid program that provides funding, "to support children who are living at home or in the community and who have substantial limitation in multiple daily activities as a result of one or more of the following disabilities: developmental disabilities, severe emotional disturbances, and physical disabilities." *Emphasis added* - DHS Website, <https://www.dhs.wisconsin.gov/clts/index.htm> It is also a full benefit Medicaid program. MEH §21.2

To be eligible for the CLTS Waiver, a child must:

1. Be under 22 years of age;
2. Be eligible for Wisconsin Medicaid;
3. Be a United States citizen or have acceptable immigration status;

4. Be a Wisconsin resident;
5. Not have income in their name in excess of the current Medicaid standards;
6. Live at home or in a foster care setting;
7. Have a level of care need that is typically provided in an institutional setting such as a hospital, a nursing home, or an institution for people with developmental disabilities; and
8. Be able to receive safe and appropriate cares at home and or in the community that does not have a cost to the Wisconsin Medicaid Program that exceeds the cost Medicaid would pay if the child were in an institution.

*Emphasis Added.* <https://www.dhs.wisconsin.gov/clts/waiver/family/eligibility.htm>

“If the child is eligible for a type of non-CARES Medicaid, such as Foster Care Medicaid, Adoption Assistance Medicaid, SSI Medicaid, or Katie Beckett Medicaid, the child will be eligible [for CLTS] as Group A Waiver.” MEH §28.14.2

However, as discussed above, the Medicaid Waivers Manual, in Section 6.03, states that the earliest possible start date for participation in a waiver program is when all four of the following criteria are met:

1. The person has met all Medicaid financial and non-financial eligibility requirements
2. An initial service plan has been established
3. The level of care eligibility has been established (the date of the Long Term Care Functional Screen)
4. The person resided in a waiver allowable setting

Again, given that it is undisputed that Petitioner’s intake was on June 21, 2016, there is no possible way the Petitioner could have met the four criteria stated above, prior to June 21, 2016. Thus, it is found that the agency correctly started the Petitioner’s CLTS benefits on June 21, 2016.

I note, however, that under MEH §28.14.1.2, that children applying for CLTS, “should first be tested with his or her family to see if there is eligibility for BadgerCare+...” There is no indication that the agency tested the Petitioner for eligibility for BadgerCare+ or regular EBD Medicaid for the period of [REDACTED] through May 12, 2016. Petitioner’s mother testified that to the best of her recollection, the Petitioner was not tested for eligibility for these programs. Therefore, this case will be remanded to the agency to determine the Petitioner’s eligibility for BadgerCare+ and regular EBD Medicaid for the period of [REDACTED] to May 12, 2016.

I note to the Petitioner’s parents that even if Petitioner is found eligible for other types of medical assistance, beginning [REDACTED], that there is still some question as to whether services received in [REDACTED], where Petitioner was born, would be covered by Wisconsin’s Medicaid programs.

### **CONCLUSIONS OF LAW**

[REDACTED] Wisconsin correctly determined the Petitioner’s eligibility dates for the COP, Katie Beckett, and CLTS programs, respectively, June 21, 2016, May 12, 2016 and June 21, 2016.

[REDACTED] Wisconsin has not shown that it followed the process described in the Medicaid Manual, with regard to testing the Petitioner for eligibility for BadgerCare+.

**THEREFORE, it is**

**ORDERED**

That within 10 days of this decision, DHS/ [REDACTED] Wisconsin test the Petitioner for eligibility for the BadgerCare+ program and regular EBD Medicaid. DHS/ [REDACTED] Wisconsin shall issue a notice to Petitioner/Petitioner's parents advising them of the eligibility determination.

In all other respects, the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

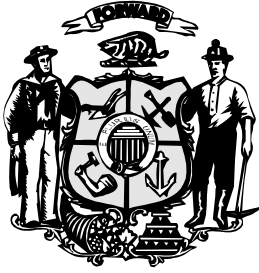
**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of January, 2017

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 5, 2017.

Bureau of Long-Term Support  
Division of Health Care Access and Accountability